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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91187460
Party	Defendant Edith M. Jebbinson and Novella S. Brown
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Date	12/19/2008
Attachments	ANSWER_TO_NOTICE_OF_OPPOSITION_91187460.pdf (6 pages)(94284 bytes) ANSWER_TO_NOTICE_OF_OPPOSITION_91187460_signatures_001.pdf (2 pages)(54895 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Tyler Perry

Opposer,

v.

Edith M Jebbinson and Novella S. Brown

Applicants

Opposition No. 91187460

Application Serial No. 77286291

Mark: MADEA'S SECRET'S

December 18, 2008

ANSWER TO NOTICE OF OPPOSITION WITH AFFIRMATIVE DEFENSES

Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

Applicants, Edith M Jebbinson and Novella S Brown, hereby submit their Answer to the Notice of Opposition filed by the Opposer, Tyler Perry as follows, with the following numbered of Paragraphs corresponding to the numbers of the paragraphs of the Notice of Opposition under the headings used in the Notice of Opposition:

1. Applicants admit that Tyler Perry is the owner of record for federal trademark Application Serial No. 77005461 for the mark MADEA in the records of the United States Patent and Trademark Office. Applicants are without knowledge or sufficient information to form a belief as to the remainder of Paragraph 1 and therefore deny the same.

2. Applicants admit that Tyler Perry is the owner of record for federal trademark Application Serial No. 77506016 for the mark FREE MADEA.

3. Applicants admit that the Opposer is an entertainer, producer, actor and director. Applicants are without knowledge or sufficient information to form a belief as to the remainder of Paragraph 3 and therefore deny the same.

4. Applicants admit the allegations of Paragraph 4.

5. Applicants admit the allegations of Paragraph 5.

6. Applicants admit the allegations of Paragraph 6.

7. Applicants admit that the Opposer has used the character name "Madea" in

the play “I Can Do Bad All By Myself”. The Applicants admit that the Opposer has used the name “Madea” as a character name before September 21, 2007, the filing date of Applicants' application. The Applicants are without knowledge or sufficient information to form a belief as to the remainder of Paragraph 7 and therefore deny the same.

8. Applicants are without knowledge or sufficient information to form a belief as to the remainder of Paragraph 8 and therefore deny the same.

9. Applicants are without knowledge or sufficient information to form a belief as to the remainder of Paragraph 9 and therefore deny the same.

10. As to Paragraph 10, the Applicants deny that the MADEA'S SECRETS mark resembles Opposer's MADEA mark as to be likely, when used in connection with Applicants' services, as to cause confusion, or mistake.

11. As to Paragraph 11, the Applicants deny that Applicants' MADEA'S SECRETS mark resembles the MADEA mark, as to cause dilution of Opposer's mark.

12. The Applicants deny the allegations in Paragraph 12.

FIRST AFFIRMATIVE DEFENSE

As and for a First Affirmative Defense, the Applicants mark of MADEA’S SECRETS due to the fact that the Applicants’ Services are not related to the services of the Opposer. Also the Opposers’ services do not include International Class 43 which lists “Catering; Catering for the provision of food and beverages; Catering in fast-food cafeterias; Catering of food and drinks“. The Opposers’ services progression from an entertainment venue to a catering service is not logical.

SECOND AFFIRMATIVE DEFENSE

The Applicants mark of MADEA’S SECRETS is distinctive from the Opposers’ mark of MADEA in that it contains an “S” and is followed by the word “SECRETS”. The Opposer’s services are not

related to the Applicants' services and have no logical progression to the Applicants' services.

Therefore, the MADEA'S SECRET'S mark in connection with food services, recipe books and/or brochures would not reflect upon and/or seriously injure the Opposer's reputation in connection with goods and services offered under the MADEA mark.

THIRD AFFIRMATIVE DEFENSE

The word is not a newly created word. The definition of the word MADEA according to the Urban Dictionary is (1) A traditionally African-American portmanteau for "Mother Dear," and (2) Contraction for "Mother Dear"; used for a grandmotherly, matriarch figure (located in <http://www.urbandictionary.com/define.php?term=Madea>). It is also listed in Wikipedia (which is a widely used online dictionary) that "Madea" or "Madear" is a typical Southern name for a grandmother. The term is a shortened form a "Mother Dear." This is located in <http://en.wikipedia.org/wiki/Mabel%22Madea%22Simmons>.

FOURTH AFFIRMATIVE DEFENSE

One of the Applicants, Edith Jebbinson, and the Opposer, Tyler Perry, were both born in New Orleans, LA. The endearment "MADEA" is a commonly used nickname in New Orleans, LA and is used some parts of the African American community in the Southern regions of the United States. The Applicant used the word "MADEA" to address her mother on a daily basis for 17 years before the Opposer was born on September 13, 1969. The Applicant, Edith M Jebbinson was born on September 15, 1951. Their birth location, region of birth and ethnicity dictates that they will have similar upbringings and therefore, utilize common words in their community.

FIFTH AFFIRMATIVE DEFENSE

According to the Opposer, Tyler Perry, he has stated "When I was growing up, and for generations before, you could find a Madea on every corner..." which is located in an article labeled A Conversation with Tyler Perry on

<http://us.penguingroup.com/static/html/africanamerican/aa-tylerperry-con.html>. The Opposer also stated in the same article “I need to let people know that I am not Madea. I have some other projects to work on that involve her. There are many other stories in me that are waiting to be told. Madea is thinking about taking a little break.” By use of the second statement, the Applicants should not have to give up their services when and if the Opposer chooses to “take a little break” from the utilization of the character name MADEA.

SIXTH AFFIRMATIVE DEFENSE

As stated in Paragraph 2, the Applicants admit that Tyler Perry is the owner of record for federal trademark Application Serial No. 77506016 for the mark FREE MADEA. However, the trademark Application Serial No. 77506016 for the mark FREE MADEA was filed on June 23, 2008, after the filing date of the Applicants’ trademark Application Serial No. 77286291 of September 21, 2007 and therefore, has no merit to this opposition.

SEVENTH AFFIRMATIVE DEFENSE

As stated in Paragraph 1, the Applicants admit that Tyler Perry is the owner of the record for federal Trademark Application Serial No. 77005461 for the mark MADEA. However, the Opposer filing date is that of September 22, 2006, which is less than 1 year of the Applicants filing date of September 21, 2007 for the Trademark Application Serial No. 77286291.

EIGHTH AFFIRMATIVE DEFENSE

The Applicants’ brochures and recipe book cover using the mark of MADEA’S SECRETS has no resemblance and does not cause confusion to that of the Opposers’ mark of MADEA. See attachments

MS_brochure1, MS_brochure 2, and MS_recipebook_cover. The Applicants' recipe book forward explicitly explains the meaning and use of the word "Madea". See attachment labeled MS_recipebook_forward.

NINETH AFFIRMATIVE DEFENSE

The Applicant, Edith M Jebbinson, is also referred to as MADEA by numerous clients, customers, friends and her daughter.

TENTH AFFIRMATIVE DEFENSE

In Section § 2.86, the trademark law states that the Applicant can:

In a single application, an applicant may apply to register the same mark for goods and/or services in multiple classes. The applicant must:

- (1) Specifically identify the goods or services in each class;
- (2) Submit an application filing fee for each class, as set forth in § 2.6(a)(1).
- (3) Include either dates of use (see §§ 2.34(a)(1)(ii) and (iii)) and one specimen for each class, or a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class. The applicant may not claim both use in commerce and a bona fide intention to use the mark in commerce for the identical goods or services in one application.

Seeing that the Opposer did not choose International Class 43, it is the determination that the Opposer did not wish to operate in that area of services when the application was filed nor at this present time seeing that an amendment to his application has not been filed since September 22, 2006.

ELEVENTH AFFIRMATIVE DEFENSE

Since April of 2007, the Applicants' use of the mark MADEA'S SECRETS in connection with catering, brochures and recipe books, has caused no confusion amongst our clients. Nor has the

MADEA'S SECRETS mark been questioned or referenced to the Opposer's MADEA mark. None of the Applicants' clients and customers have referred to, confused or linked the similarity of the Opposers' mark with the Applicants' mark of MADEA'S SECRETS. Most of them had not seen any of the Opposers' movies or plays nor have read any articles or books written by the Opposer nor have read any articles or books written by others about the Opposer. Over ninety percent of the Applicants' clients and customers had no idea of the pronunciation of the word 'Madea' until we gave them the correct pronunciation and history behind the word, which is located in the forward of the recipe book. The Applicants' clientele is 70 % African American and 30% Caucasian.

WHEREFORE, the Applicants respectfully request that the Notice of Opposition be rejected and that the Applicants' mark be allowed to proceed with registration.

Respectfully submitted,

Dated: _____

12-18-08

By: _____



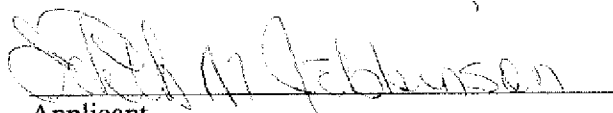
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CERTIFICATE OF SERVICE

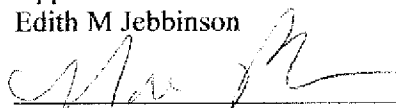
I hereby certify that the above and foregoing Answer to Notice of Opposition with Affirmative Defenses was served upon Opposer by depositing a copy of the same in the United States mail, first class postage prepaid, on this 19th day of December, 2008, addressed to:

Victor K. Sapphire, Esq.
Connolly Bove Lodge & Hutz LLP
333 S. Grand Avenue, Suite 2300
Los Angeles, California 90071

Attorney for Opposer



Applicant
Edith M Jebbinson



Applicant
Novella S. Brown